

Exhibit I

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE:) C-05-01114-JW
ACACIA MEDIA)
TECHNOLOGIES) SEPTEMBER 14, 2006
CORPORATION.)
_____) PAGES 1-150

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT
JUDGE JAMES WARE

A P P E A R A N C E S:

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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

U.S. COURT REPORTERS

SAN JOSE, CALIFORNIA SEPTEMBER 14, 2006

P R O C E E D I N G S

(WHEREUPON, COURT CONVENED AND THE
FOLLOWING PROCEEDINGS WERE HELD:)

THE CLERK: CALLING THE ACACIA MATTER.

COUNSEL, PLEASE STEP FORWARD AND STATE

YOUR APPEARANCES.

MR. DORMAN: GOOD MORNING, YOUR HONOR.

ROD DORMAN AND ALAN BLOCK FOR ACACIA PLAINTIFFS.

MR. BENYACAR: GOOD MORNING, YOUR HONOR.

DAVID BENYACAR FOR DEFENDANT TIME WARNER CABLE,
INCORPORATED.

MS. DURIE: GOOD MORNING, YOUR HONOR,

DARALYN DURIE FROM KEKER & VAN NEST FOR COMCAST.

MR. KREEGER: GOOD MORNING. MATTHEW

KREEGER FROM MORRISON & FOERSTER AND WITH ME IS A
COLLEAGUE OF MINE DAVID HYMAS WHO WILL HAVE A
SPEAKING ROLE TODAY.

MR. WONG: GOOD MORNING. CHARLES WONG OF
JONES DAY ON BEHALF OF DIRECT T.V.

MR. DEAN: GOOD MORNING, YOUR HONOR.

JEFFREY DEAN OF MARSHALL, GERSTEIN & BORUN ON
BEHALF OF CHARTER COMMUNICATIONS AND 12 OTHER
COMPANIES.

THE COURT: VERY WELL. THIS IS A

U.S. COURT REPORTERS

03:19:29 1 IN TERMS OF, IN TERMS OF, OF, YOU KNOW, IF WE WERE
03:19:33 2 REWRITING IT BUT MY UNDERSTANDING IS THAT BECAUSE
03:19:35 3 HE'S PUTTING THAT UP THERE, HE'S JUST INDICATING
03:19:38 4 THAT, YOU KNOW, THE TRANSMISSION ONLY OCCURS AFTER
5 THE STUFF HAS BEEN RECEIVED IN RESPONSE AND IT
6 RELATES TO THE SUBJECT MATTER THAT WAS STORED.
03:19:47 7 THAT'S HOW I UNDERSTOOD IT.
03:19:48 8 THE COURT: OKAY. ALL RIGHT. WELL, I
03:19:50 9 HAVE HEARD ENOUGH ON THIS SO LET'S MOVE ON.
03:20:14 10 MR. BLOCK: YOUR HONOR, OUR NEXT TERM
03:20:15 11 RESIDES IN CLAIM 17 OF THE '863 PATENT AND THERE
03:20:19 12 ARE ACTUALLY TWO ISSUES INVOLVING THE USING PHRASE.
03:20:22 13 SO WE'RE TALKING ABOUT AFTER THE MATERIAL HAS BEEN
03:20:24 14 TRANSMITTED FROM THE CENTRAL PROCESSING LOCATION,
03:20:27 15 IT'S BEEN RECEIVED AT THE LOCAL DISTRIBUTION
03:20:29 16 SYSTEM, IT'S BEEN STORED THERE, AND NOW THE NEXT
03:20:32 17 STEP IN 17 THERE IS USING THE STORED COMPRESSED
03:20:36 18 DIGITIZED DATA TO TRANSMIT A REPRESENTATION OF THE
03:20:39 19 AT LEAST ONE ITEM AND THEN THERE'S AN ERROR HERE,
03:20:42 20 IT SAYS TO AT A PLURALITY OF SUBSCRIBER RECEIVING
03:20:46 21 STATIONS COUPLED TO THE LOCAL DISTRIBUTION SYSTEM.
03:20:48 22 AND THE TWO ISSUES ARE WHETHER THIS WORD
03:20:51 23 USING TO TRANSMIT IS AN INDEFINITE, IT'S THE ROUND
03:20:59 24 TWO DEFENDANTS' POSITION.
03:21:00 25 AND THE OTHER ISSUE IS WHETHER THIS

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U.S. COURT REPORTERS

03:21:07 1 MISTAKE OF TO AND AT A PLURALITY RENDERS THIS
03:21:09 2 PHRASE INDEFINITE WHICH IS THE ROUND THREE
03:21:14 3 DEFENDANTS' POSITION.
03:21:14 4 COULD I PUT UP 262, PLEASE. I'M GOING TO
03:21:21 5 ADDRESS FIRST THE USING ISSUE. THIS IS THE PHRASE
03:21:26 6 AGAIN IN CLAIM 17 THAT WE'RE TALKING ABOUT USING
03:21:28 7 STORED COMPRESSED DIGITIZED DATA TO TRANSMIT A
03:21:32 8 REPRESENTATION OF THE AT LEAST ONE ITEM.
03:21:34 9 SO WHAT THE CLAIM IS REALLY SAYING AND
03:21:37 10 MAKING CLEAR TO PERSONS OF SKILL IN THE ART IS THAT
03:21:39 11 THE DATA IS BEING EMPLOYED AS A MEANS TO TRANSMIT
03:21:43 12 AT LEAST ONE ITEM OF INFORMATION.
03:21:45 13 THE COURT: WHAT DATA?
03:21:48 14 MR. BLOCK: THE STORED COMPRESSED
03:21:49 15 DIGITIZED DATA.
03:21:50 16 THE COURT: WHAT IS THAT? THAT GOES BACK
03:21:52 17 TO MY EARLIER QUESTION, WHAT IS THAT? IS THAT THE,
03:21:55 18 IS THAT THE AUDIO/VIDEO INFORMATION THAT YOU REALLY
03:21:58 19 WANT TO TRANSMIT OR IS THAT SOMETHING ELSE?
03:22:01 20 MR. BLOCK: IT'S THE INFORMATION THAT YOU
03:22:03 21 WANT TO TRANSMIT. IT'S THE DATA THAT WAS
22 TRANSMITTED FROM THE CENTRAL PROCESSING LOCATION TO
23 THE LOCAL DISTRIBUTION SYSTEM AND THEN STORED IN
03:22:12 24 ITS ENTIRETY AT THE LOCAL DISTRIBUTION SYSTEM.
03:22:15 25 AND NOW WE'VE GOT TO GET IT FROM THE

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U.S. COURT REPORTERS

03:22:18 1 LOCAL DISTRIBUTION SYSTEM, TO THE SUBSCRIBER
03:22:21 2 RECEIVING STATIONS AND THIS IS THE STEP THAT TELLS
03:22:23 3 US THAT THAT OCCURS.
03:22:25 4 IT SAYS USING THE STORED COMPRESSED DATA
03:22:27 5 TO TRANSMIT A REPRESENTATION OF THE ITEM. SO IT'S
03:22:32 6 SAYING, HEY, WE HAVE GOT THIS DATA NOW AND THIS IS
03:22:34 7 THE DATA WE'RE GOING TO USE TO TRANSMIT THE ITEM OF
03:22:37 8 INFORMATION.
03:22:38 9 CAN YOU GO BACK TO 17?
03:22:40 10 IT ALSO MAKES CLEAR TO THE READER THAT
03:22:44 11 THERE'S MORE THAN ONE INSTANCE WHERE THIS
03:22:47 12 COMPRESSED DIGITIZED DATA APPEARS. IT APPEARS IN
03:22:51 13 THE FIRST STEP WHERE YOU'RE FORMATTING THE ITEMS AS
03:22:54 14 COMPRESSED DIGITIZED DATA AND THEN FROM THE CENTRAL
03:22:57 15 PROCESSING LOCATION YOU ALSO HAVE COMPRESSED
03:23:01 16 DIGITIZED DATA. YOU'RE RECEIVING THAT AT THE LOCAL
03:23:06 17 DISTRIBUTION SYSTEM AND YOU'RE STORING COMPRESSED
03:23:07 18 DIGITIZED DATA AT THE LOCAL DISTRIBUTION SYSTEM.
03:23:12 19 THIS MAKES CLEAR TO THE READER WHICH OF
03:23:14 20 THOSE DIFFERENT COMPRESSED DIGITIZED DATA IS BEING
03:23:17 21 USED TO MAKE THIS TRANSMISSION.
03:23:19 22 THE COURT: WHICH?
03:23:20 23 MR. BLOCK: IT'S THE ONE THAT HAS BEEN
03:23:22 24 STORED AT THE LOCAL DISTRIBUTION SYSTEM.
03:23:24 25 THE COURT: AREN'T THEY ALL THE SAME?

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U.S. COURT REPORTERS

03:23:26 1 MR. BLOCK: WELL, THEY'RE THE SAME BUT
03:23:28 2 THEY'RE IN DIFFERENT PARTS OF, OF THE STEP. SO
03:23:34 3 HERE THE COMPRESSED DIGITIZED DATA IS AT THE
03:23:37 4 CENTRAL PROCESSING LOCATION. HE COULD HAVE KEPT A
03:23:40 5 COPY THERE AND IT'S SAYING DON'T TRANSMIT THAT ONE
03:23:43 6 TO THE SUBSCRIBER RECEIVING STATION, TRANSMIT THE
03:23:46 7 ONE THAT IS STORED AT THE LOCAL DISTRIBUTION
03:23:51 8 SYSTEM.
03:23:51 9 THE COURT: OR USE THE ONE THAT IS
03:23:52 10 STORED.
03:23:52 11 MR. BLOCK: USE THE ONE, RIGHT.
03:23:54 12 THE COURT: SO IT'S INTERESTING THAT THE
03:24:02 13 PATENTEE USED THE WORD USING AS OPPOSED TO
03:24:05 14 TRANSMITTING WITH RESPECT TO THE STORED COMPRESSED
03:24:09 15 DIGITAL DATA.
03:24:10 16 I TAKE YOUR POINT HAVING TO DO WITH
03:24:12 17 STORED, IN OTHER WORDS, THAT MODIFIES WHAT PORTION
03:24:15 18 OF THE COMPRESSED DIGITIZED DATA YOU'RE USING, THE
03:24:21 19 PART THAT HAS BEEN STORED.
03:24:22 20 MR. BLOCK: RIGHT.
03:24:23 21 THE COURT: BUT I -- WHAT IS YOUR
03:24:25 22 EXPLANATION FOR THE TERM USING?
03:24:28 23 MR. BLOCK: AGAIN, IT'S TELLING YOU WHAT
03:24:30 24 DATA I'M USING TO TRANSMIT. HE'S SAYING EMPLOY
03:24:36 25 THAT DATA TO TRANSMIT THE REPRESENTATION OF THE

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U.S. COURT REPORTERS

03:24:38 1 ITEM.
03:24:42 2 THE COURT: SO YOU'RE EMPLOYING THAT
03:24:44 3 INFORMATION TO TRANSMIT A REPRESENTATION OF
03:24:46 4 SOMETHING IN THAT INFORMATION?
5 MR. BLOCK: RIGHT.
6 THE COURT: OKAY.
03:24:50 7 MR. BLOCK: NOW, THE OTHER ISSUE IN THIS
03:24:52 8 PHRASE -- WOULD YOU GO TO 269, PLEASE. JUST TO
03:25:06 9 MAKE SURE THAT WE UNDERSTAND THE LAST PART. THE
03:25:09 10 ITEM MAKES UP THE ENTIRE WORK AND SO THAT THE DATA
03:25:12 11 THAT IS BEING USED TO TRANSMIT THAT ITEM
03:25:15 12 COMMUNICATES THAT ENTIRE DATA IS BEING USED TO
03:25:18 13 TRANSMIT THE ITEM FROM THE USING PHRASE I'M TALKING
03:25:21 14 ABOUT.
03:25:21 15 THE COURT: YEAH, I HEARD YOU.
03:25:25 16 MR. BLOCK: SO THE OTHER ISSUE NOW ON THE
03:25:27 17 USING PHRASE IS WHETHER OR NOT THAT THE PHRASE HAS
03:25:30 18 TO TRANSMIT AND TO AT A PLURALITY OF SUBSCRIBER
03:25:34 19 RECEIVING STATIONS.
03:25:38 20 IT'S CLEARLY A MISTAKE AND IT WASN'T
03:25:41 21 INTENDED, HOWEVER, IT DOESN'T RENDER THIS CLAIM
03:25:44 22 PHRASE INDEFINITE BECAUSE ON ITS FACE IT'S CLEAR
03:25:47 23 THAT WHAT IS BEING COMMUNICATED IS THE TRANSMISSION
03:25:50 24 OF DATA TO THE PLURALITY OF SUBSCRIBER RECEIVING
03:25:54 25 STATIONS. IT DOESN'T USE THE WORD ONE; IT DOESN'T

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03:26:03 1 SAY AT LEAST ONE. WHAT IT SAYS IS A PLURALITY. SO
03:26:04 2 NEXT SLIDE.
03:26:04 3 SO A PERSON OF ORDINARY SKILL IN THE ART
03:26:09 4 READING THIS CLAIM PHRASE IN LIGHT OF THE
03:26:12 5 SPECIFICATION WOULD HAVE UNDERSTOOD THE CLAIM TO
03:26:13 6 MEAN A REPRESENTATION OF THE AT LEAST ONE ITEM OF
03:26:17 7 INFORMATION IS TRANSMITTED SUCH THAT IT IS RECEIVED
03:26:21 8 BY A PLURALITY OF SUBSCRIBER RECEIVING STATIONS.
03:26:24 9 WOULD YOU GO TO 272.
03:26:29 10 THE COURT: SHOULD I WORRY ABOUT
03:26:31 11 PLURALITY IN THAT?
03:26:33 12 MR. BLOCK: NO, AND I WAS JUST GOING TO
03:26:35 13 GET TO THAT, YOUR HONOR.
03:26:36 14 THE COURT: OH.
03:26:37 15 MR. BLOCK: THE SPECIFICATION DOES
03:26:38 16 DISCLOSE TRANSMITTING TO A PLURALITY OF USERS AND
03:26:42 17 THE '863 PATENT IN COLUMN 4, LINE 51 TO 56 IT TALKS
03:26:49 18 ABOUT FIGURE 1G THAT WE LOOKED AT EITHER THIS
03:26:52 19 MORNING AND IT SAYS IT PREFERABLY TRANSMITS
03:26:58 20 REQUESTED MATERIAL OVER AIRWAVE COMMUNICATION
03:27:00 21 CHANNELS 200D TO A PLURALITY OF USERS.
22 SO TRANSMITTING INFORMATION TO A
23 PLURALITY OF USERS IS DISCLOSED IN THE
03:27:11 24 SPECIFICATION.
03:27:13 25 THE COURT: WHAT DOES IT MEAN, THOUGH,

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03:27:15 1 MULTIPLE OR -- WHAT IS PLURALITY?
03:27:18 2 MR. BLOCK: MORE THAN ONE.
03:27:26 3 AND, YOUR HONOR, UNLESS YOU HAVE ANY
03:27:28 4 QUESTIONS, I'M PREPARED TO ALLOW THE DEFENDANTS TO
03:27:30 5 ARGUE.
03:27:31 6 THE COURT: ALL RIGHT.
03:27:47 7 MR. WONG: CHARLES WONG WITH JONES DAY.
03:27:50 8 OKAY. OUR STEP -- OUR POSITION IS THAT
03:28:07 9 THE STEP OF USING THE STORED COMPRESSED DIGITIZED
03:28:11 10 DATA TO TRANSMIT A REPRESENTATION OF THE AT LEAST
03:28:14 11 ONE ITEM IS INDEFINITE BECAUSE ONE OF SKILL IN THE
03:28:16 12 ART CANNOT UNDERSTAND WHAT AFFIRMATIVE ACT IS
03:28:19 13 COVERED BY THIS METHOD STEP.
03:28:21 14 CAN WE GO TO THE NEXT SLIDE.
03:28:23 15 THIS SLIDE SHOWS CLAIM 17 AND AS
03:28:29 16 MR. BLOCK HAS GONE OVER IT. IT TALKS ABOUT THE
03:28:33 17 DATA BEING TRANSFERRED FROM THE CENTRAL PROCESSING
03:28:36 18 LOCATION TO THE LOCAL DISTRIBUTION SYSTEM AND THEN
03:28:40 19 SUBSEQUENTLY TO THE SUBSCRIBER RECEIVING STATIONS.
03:28:43 20 NOW, THE ONLY POINT I WANT TO MAKE HERE
03:28:47 21 IS THAT THIS USING THE STORED COMPRESSED STEP OF
03:28:52 22 USING THE STORED COMPRESSED DIGITIZED DATA OCCURS
03:28:56 23 AT THE LOCAL DISTRIBUTION SYSTEM. IT IS NOT AT THE
03:28:58 24 TRANSMISSION SYSTEM OR AT THE SUBSCRIBER LOCATION.
03:29:00 25 NEXT SLIDE, PLEASE.

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U.S. COURT REPORTERS

03:29:02 1 SO TAKING A CLOSER LOOK AT THE, AT THIS
03:29:06 2 STEP, AND I MIGHT ADD THIS USING STEP IS ALSO FOUND
03:29:11 3 IN CLAIM 11 OF THE '720 PATENT BUT THEY'RE
03:29:14 4 IDENTICAL IN RELEVANT PARTS FOR THE ISSUE HERE.
03:29:20 5 NOW, THE POINT I WOULD LIKE TO MAKE HERE
03:29:23 6 IS THE USING, THIS STEP REQUIRES THAT, THAT THE
03:29:27 7 ELEMENT THAT IS ACTUALLY TRANSMITTED TO THE
03:29:30 8 SUBSCRIBER RECEIVING STATIONS IS THE REPRESENTATION
03:29:33 9 OF THE AT LEAST ONE ITEM.
03:29:34 10 IT'S NOT THE STORED COMPRESSED DIGITIZED
03:29:38 11 DATA. IT'S NOT THE ITEM. IT'S THE REPRESENTATION
03:29:42 12 OF THE AT LEAST ONE ITEM.
03:29:43 13 AND UNDER THE RULES OF CLAIM
03:29:46 14 CONSTRUCTION, WE SHOULD TREAT THESE ELEMENTS AS
03:29:52 15 LISTING THE SAME THINGS.
03:29:53 16 SO MR. BLOCK SAYS THEIR POSITION IS THAT
03:29:56 17 THE CLAIM MAKES IT CLEAR. JUST SEND THE STORED
03:30:00 18 COMPRESSED DIGITIZED DATA. THAT'S WHAT THIS STEP
03:30:03 19 MEANS. BUT THAT'S NOT WHAT THE CLAIM SAYS.
03:30:06 20 IT SAYS TO USE THE STORED COMPRESSED
03:30:09 21 DIGITIZED DATA AND SEND THE REPRESENTATION OF THE
03:30:12 22 AT LEAST ONE ITEM.
03:30:14 23 SO WHAT DOES THIS ALL MEAN? WE ALL READ
03:30:17 24 THE PATENT AND WE KNOW THE PATENT TALKS ABOUT
03:30:20 25 PROCESSING DIFFERENT MATERIALS AND MAYBE A MOVIE,

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U.S. COURT REPORTERS

03:48:21 1 COMPRISES ALL OF THESE POSITIVE ACTIVE STEPS. AND
03:48:25 2 THAT'S THE DIFFERENCE BETWEEN THIS CLAIM AND
03:48:27 3 ERLICH.
03:48:28 4 THE COURT: YEAH, I UNDERSTAND BOTH SIDES
5 HERE. IN OTHER WORDS, IF I CONSTRUE A STEP
6 COMPRISING USING THE STORED COMPRESSED DIGITIZED
03:48:40 7 DATA TO TRANSMIT, I DON'T KNOW HOW IT'S USED, AND
03:48:43 8 THAT MAY ARGUABLY BE USED IN DIFFERENT WAYS, BUT IF
03:48:45 9 I INTERPRET USING IT DERIVING FROM THAT THE
03:48:49 10 INFORMATION TO BE TRANSMITTED, I UNDERSTAND ITS
03:48:51 11 UTILITY IN THE CLAIM.
03:48:53 12 MR. BLOCK: OKAY. VERY WELL.
03:48:55 13 MR. DORMAN: YOUR HONOR, THE ONE FINAL
03:48:56 14 POINT ON THAT, IT IS OUR CONTENTION THAT THAT, THAT
03:48:59 15 THAT ELEMENT, IF IT WERE, WOULD BE IDENTICAL, IF IT
03:49:04 16 WERE REWRITTEN, TO SAY TRANSMITTING A
03:49:08 17 REPRESENTATION OF THE AT LEAST ONE ITEM TO A
03:49:10 18 PLURALITY OF SUBSCRIBER RECEIVING STATIONS COUPLED
03:49:13 19 TO THE LOCAL DISTRIBUTION SYSTEM USING THE STORED
03:49:17 20 COMPRESSED DIGITIZED DATA.
03:49:20 21 THE COURT: I AGREE THAT THAT WOULD LEAVE
03:49:22 22 YOU IN THE SAME POSITION THAT YOU'RE IN NOW,
03:49:24 23 NAMELY, IT WOULD ALLOW ME TO INTERPRET, IT WOULD
03:49:28 24 REQUIRE THAT I INTERPRET HOW IT'S USED OR
03:49:30 25 WHETHER -- HOW IT'S USED.

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U.S. COURT REPORTERS

1 IS IT USED TO TRANSMIT? DO I DERIVE
03:49:35 2 INFORMATION FROM THAT TO ALLOW ME TO TRANSMIT OR DO
03:49:38 3 I DERIVE INFORMATION FROM THAT AS THE INFORMATION
03:49:42 4 WHICH IS TRANSMITTED?
03:49:43 5 MR. DORMAN: ANOTHER EXAMPLE THAT MAY BE
03:49:45 6 HELPFUL ABOUT, AND WHEN YOU USE THE WORD DERIVE,
03:49:49 7 IF, IF I WERE TO SAY USING A PHOTO TO SEND AN IMAGE
03:49:55 8 OF THE KIDS TO GRANDMA, IT WOULD BE CLEAR WHAT I
03:50:02 9 WOULD BE DOING.
03:50:02 10 THE COURT: EXACTLY. BECAUSE A PHOTO, AN
03:50:05 11 IMAGE MIGHT RELATE BUT THAT STORED COMPRESSED
03:50:08 12 DIGITIZED DATA COULD BE DATA WHICH WOULD CONTAIN
03:50:11 13 INFORMATION INSTRUCTING THE COMPUTER ON HOW TO
03:50:14 14 TRANSMIT.
03:50:14 15 A PHOTO BY DEFINITION COULD NOT CONTAIN
03:50:17 16 INSTRUCTIONS. THE REASON THAT THIS IS ARGUABLY A
03:50:19 17 PROBLEM FOR YOU ALL IS THAT, IS THAT STORED DIGITAL
03:50:22 18 DATA COULD BE DATA THAT COULD DO ANYTHING. IT
03:50:25 19 COULD BE THE INFORMATION. IT COULD TELL YOU HOW TO
03:50:27 20 USE THE INFORMATION BECAUSE IT'S DATA.
03:50:32 21 IT DOES SEEM TO ME THAT BEFORE I ACCEPT
22 THE USING IT AS A METHOD TO CONTROL TRANSMISSION,
23 SOMEHOW I WOULD HAVE TO SEE A STEP ABOVE WHICH
03:50:45 24 WOULD PUT WITHIN THAT STORED DIGITAL DATA THOSE
03:50:49 25 INSTRUCTIONS, AND I DON'T SEE THAT.

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U.S. COURT REPORTERS

03:50:51 1 ALL THAT, ALL THAT THE DIGITAL DATA IS
03:50:56 2 CALLED OUT IS THE, IS THE AUDIO VIDEO INFORMATION.
03:51:00 3 IT DOESN'T CONTAIN ANY INSTRUCTIONS ON TRANSMISSION
03:51:03 4 SO I CONSISTENTLY, PERHAPS I SHOULD INTERPRET IT
03:51:06 5 WITH ACACIA'S DEFINITION IN MIND BECAUSE THERE'S NO
03:51:10 6 SUGGESTION THAT THAT STORED COMPRESSED DIGITAL DATA
03:51:14 7 IS ANYTHING OTHER THAN THE ITEMS OF INFORMATION.
03:51:16 8 MR. DORMAN: THE OTHER THING TO YOUR
03:51:18 9 POINT, YOUR HONOR, IS THAT ONE OF ORDINARY SKILL IN
03:51:20 10 THE ART WOULD KNOW YOU DON'T COMPRESS INSTRUCTIONS,
03:51:24 11 YOU ONLY COMPRESS CONTENT.
03:51:26 12 THE COURT: OH, I WOULD ARGUE WITH THAT.
03:51:28 13 IN OTHER WORDS, YOU COULD COMPRESS ALL KINDS OF
03:51:30 14 THINGS DIGITALLY AND ON THE UNCOMPRESSED SIDE THOSE
03:51:34 15 INSTRUCTIONS MIGHT SAY DISPLAY THE COLOR OF BLUE.
03:51:36 16 BUT YOU CAN COMPRESS DISPLAY THE COLOR BLUE WHEN
03:51:40 17 YOU SEND THE INFORMATION OUT BECAUSE THAT GETS
03:51:43 18 UNCOMPRESSED AND THE PATENT.
03:51:45 19 MR. DORMAN: BUT WHAT THIS PATENT TALKS
03:51:47 20 ABOUT WHEN IT TALKS ABOUT COMPRESSING, IT'S
03:51:49 21 COMPRESSING, IT'S COMPRESSING CONTENT, AUDIO VIDEO,
03:51:52 22 THAT'S WHAT THIS TEACHES.
03:51:53 23 THE COURT: I UNDERSTAND. I'VE GOT THAT
03:51:54 24 POINT.
03:51:55 25 MR. WONG: THERE ARE MANY DIFFERENT WAYS

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U.S. COURT REPORTERS

03:52:04 1 THAT THE COURT IS ENVISIONING OF HOW THIS WORD
03:52:07 2 USING COULD BE APPLIED AND WHAT COULD BE DONE WITH
03:52:10 3 THE COMPRESSED DIGITIZED STORED DATA AND I THINK IT
03:52:15 4 DEMONSTRATES THE SUFFICIENCY OF THE WORD USING. WE
03:52:19 5 JUST DON'T KNOW WHAT YOU'RE SUPPOSED TO DO WITH
03:52:21 6 THAT.
03:52:22 7 AND ACACIA IS ASKING US, WELL, LET'S,
03:52:26 8 LET'S MAKE IT MEAN, WE'RE GOING TO DERIVE THE
03:52:29 9 REPRESENTATION OF THE ITEM FROM THE STORED
03:52:33 10 COMPRESSED DATA AND SEND IT.
03:52:35 11 AND AS YOU SAID, YOU KNOW, PERHAPS THERE
03:52:37 12 IS INFORMATION IN THERE THAT, THAT MAKES IT, MAKES
03:52:41 13 THE, MAKES THE, MAKES THE -- TRIGGERS THE
03:52:44 14 TRANSMISSION BUT, NO, ACACIA SAYS THE SAME THING.
03:52:50 15 IT'S THE COMPLETE ITEM.
03:52:51 16 SO THEY'RE STILL TALKING ABOUT HAVING THE
03:52:53 17 MOVIE IN ITS COMPRESSED FORM AND SENDING THE MOVIE.
03:52:57 18 AND AGAIN A PERSON OF SKILL IN THE ART WOULD SIMPLY
03:52:59 19 SAY TRANSMIT THE STORED COMPRESSED DIGITIZED DATA.
03:53:02 20 THEY DON'T GET COMPLICATED AND START ADDING THESE
03:53:06 21 NEW TERMS AND, AND, AND RAISING AMBIGUITY THAT,
03:53:10 22 THAT IS, WELL, SUBSEQUENTLY NOT CLEARED UP IN THE
03:53:14 23 SPECIFICATION.
03:53:15 24 THE COURT: IT PARALLELS THE PROBLEM IN
03:53:18 25 CLAIM 14 AS I SEE IT, THE IN RESPONSE TO THE STORED

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U.S. COURT REPORTERS

03:53:23 1 COMPRESSED DIGITIZED DATA TRANSMITTING A
03:53:25 2 REPRESENTATION IS SIMILAR TO THE PROBLEM YOU'RE
03:53:28 3 PRESENTING TO ME WITH USING IT TO TRANSMIT.
03:53:30 4 NOW, AT LEAST IN CLAIM 14 THEY DO
5 DISCLOSE A TRANSMITTING STEP. IN RESPONSE TO THIS
6 I'M TRANSMITTING SOMETHING. IN THE USING STEP IT
03:53:39 7 DOESN'T SAY TRANSMITTING ANYTHING BUT I'M ASKED TO
03:53:42 8 READ TO TRANSMIT AS TRANSMITTING AS A STEP
03:53:46 9 COMPRISING THAT STEP OF TRANSMITTING. AND SO I SEE
03:53:48 10 THE PROBLEM. I DON'T NEED TO HEAR MORE ON THIS.
03:53:52 11 MR. WONG: THANK YOU.
03:54:05 12 MR. BENYACAR: I'D LIKE TO FOCUS ON A
03:54:07 13 DIFFERENT ASPECT OF THIS LIMITATION WHICH IS THE
03:54:10 14 REQUIREMENT THAT YOU TRANSMIT TO AT LEAST A
03:54:13 15 PLURALITY OF SUBSCRIBER RECEIVING STATIONS.
03:54:15 16 NOW, IN HIS OPENING REMARKS ON THIS
03:54:18 17 MR. BLOCK SAID THAT IT'S IN ERROR AND IT IS A
03:54:22 18 MISTAKE WHICH WAS NOT INTENDED.
03:54:24 19 WELL, THE QUESTION IS WHAT WAS INTENDED?
03:54:27 20 AND, AND WHAT I SHOW UP HERE IS AT LEAST TWO
03:54:32 21 OPTIONS, ONE IS THAT THE TRANSMISSION BE TO A
03:54:35 22 PLURALITY OF SUBSCRIBER RECEIVING STATIONS SO THAT
03:54:39 23 MORE THAN ONE SUBSCRIBER RECEIVING STATION WOULD
03:54:42 24 RECEIVE THE TRANSMISSION AND YOU WOULD ACHIEVE THAT
03:54:45 25 BY REMOVING THE WORD "AT" FROM THE CLAIM.

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1 ANOTHER OPTION IS THAT IT WAS INTENDED TO
03:54:50 2 SAY TRANSMIT TO AT LEAST ONE OF A PLURALITY OF
03:54:54 3 SUBSCRIBER RECEIVING STATIONS SO THERE WOULD BE A
03:54:57 4 PLURALITY MORE THAN ONE SUBSCRIBER RECEIVING
03:55:00 5 STATIONS BUT IT WOULD BE OKAY IF ONLY ONE OF THOSE
03:55:03 6 RECEIVED IT.
03:55:04 7 NOW, I JUST WANT TO POINT OUT THAT, THAT
03:55:10 8 IN THE CORRESPONDING LIMITATION OR THE GENERALLY
03:55:13 9 CORRESPONDING LIMITATION FROM, FROM CLAIM 14, CLAIM
03:55:23 10 14 SAYS TRANSMITTING A REPRESENTATION TO AT LEAST
03:55:26 11 ONE OF A PLURALITY OF SUBSCRIBER RECEIVING
03:55:29 12 STATIONS. AND THIS IS, THIS IS AT COLUMN 21, LINE
03:55:38 13 46, APPROXIMATELY.
03:55:40 14 SO CLAIM 41 WAS TO AT LEAST ONE OF A
03:55:45 15 PLURALITY. THAT WAS CLAIM 14. SO WHAT WAS
03:55:51 16 INTENDED IN CLAIM 17? WAS IT INTENDED TO BE THE
03:55:54 17 SAME AS CLAIM 14 WHICH IS AT LEAST ONE OF OR WAS IT
03:55:58 18 CLAIMED TO BE DIFFERENT THAN CLAIM 14? AND THE
03:56:00 19 WORD "AT" WAS MISTAKENLY PUT IN SO IT'S ACTUALLY
03:56:03 20 SENT TO A PLURALLY? THERE'S NO WAY TO KNOW.
03:56:06 21 THERE'S NO WAY TO KNOW WHAT WAS INTENDED AND WE
22 CITE THE NOVO INDUSTRIES CASE UP HERE BECAUSE THE
23 COURT CANNOT BE REQUIRED TO GUESS AS TO WHICH ONE
03:56:18 24 WAS INTENDED. IF THERE'S NO WAY TO KNOW THEN THE
03:56:23 25 CLAIM IS INDEFINITE.

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03:56:24 1 AND NOVO ALSO EXPRESSLY SAID THAT IT'S
03:56:27 2 JUST AS LIKELY WORDS WERE INTENDED TO BE ADDED AS
03:56:30 3 IT WAS THAT WORDS WERE REQUIRED TO BE CHANGED OR
03:56:32 4 DELETED. SO THERE'S NO PRESUMPTION THAT WHAT WAS
03:56:35 5 INTENDED WAS TO REMOVE WORDS RATHER THAN ADD THEM.
03:56:39 6 SO BECAUSE THERE'S NO WAY TO KNOW WHAT WAS
03:56:41 7 INTENDED, BECAUSE THE CLAIM WOULD HAVE A DIFFERENT
03:56:43 8 SCOPE UNDER EITHER ONE OF THOSE, THE CLAIM IS
03:56:46 9 INDEFINITE.
03:56:50 10 THANK YOU.
03:56:51 11 MR. BLOCK: PUT BACK 14 OR I'M SORRY 17.
03:57:09 12 THE PHRASE IS TO A PLURALITY. THERE'S
03:57:12 13 NOTHING ABOUT ONE OR AT LEAST. IT SAYS A
03:57:16 14 PLURALITY. THAT'S WHAT IT SAYS AND THAT'S WHAT ONE
03:57:19 15 OF ORDINARY SKILL IN THE ART READING THIS CLAIM
03:57:21 16 WOULD UNDERSTAND IT TO MEAN.
03:57:23 17 THE COURT: WELL, YOU MUST ADMIT THAT,
03:57:26 18 THAT CLAIM 14 CONTAINS SOME OF THOSE WORDS IT'S TO
03:57:33 19 AT AND THEN, AND THEN IT'S PHRASED AT LEAST ONE OF
03:57:38 20 AND SO PERHAPS AT LEAST ONE OF WAS LEFT OUT IS THE
03:57:45 21 SUGGESTION.
03:57:47 22 WHY ISN'T THAT JUST AS PLAUSIBLE THAT AT
03:57:53 23 WAS PUT IN INCORRECTLY?
03:57:56 24 MR. BLOCK: THEY'RE EQUALLY PLAUSIBLE,
03:57:58 25 HOWEVER, THIS IS WHAT IT SAYS AND THIS IS WHAT WE

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03:58:00 1 HAVE TO DEAL WITH. PLURALITY OF SUBSCRIBER
03:58:03 2 STATEMENT IS DISCLOSED IN THE SPECIFICATION. THE
03:58:06 3 ISSUE FOR THE COURT IS WHETHER ONE OF ORDINARY
03:58:08 4 SKILL IN THE ART READING THIS CLAIM PHRASE WOULD BE
03:58:12 5 ABLE TO UNDERSTAND WHAT IT MEANS IN LIGHT OF THE
03:58:14 6 SPECIFICATION.
03:58:16 7 THE COURT: WELL, IS THERE A DIFFERENCE
03:58:18 8 IN THE SPECIFICATION THAT I COULD TRACE TO CLAIM 14
03:58:23 9 WHICH WOULD SUPPORT AT LEAST ONE OF A PLURALITY
03:58:25 10 WHICH WOULD NOT SUPPORT ADDING THAT TO CLAIM 17?
03:58:29 11 MR. BLOCK: CORRECT. I DON'T HAVE A
03:58:35 12 SPECIFIC PART OF THE SPECIFICATION BUT IT CLEARLY
03:58:37 13 DOES TALK ABOUT TRANSMITTING TO AT LEAST ONE OF.
03:58:40 14 THE COURT: BUT MY QUESTION IS, IS THERE
03:58:42 15 SOMETHING IN THE SPECIFICATION THAT WOULD HELP ME
03:58:45 16 SOLVE THE PROBLEM OF WHETHER THE PATENTEE
03:58:47 17 DELIBERATELY LEFT AT LEAST ONE OUT OF 17 OR JUST
03:58:55 18 ACCIDENTALLY OR WHETHER IT WAS NEVER INTENDED TO
03:58:56 19 PUT IT IN?
03:58:57 20 MR. BLOCK: THERE'S NOTHING IN THE
03:58:58 21 SPECIFICATION THAT WOULD TELL ME THAT, YOUR HONOR.
03:59:00 22 THE COURT: AND IS THIS A MINOR ERROR OR
03:59:07 23 IN OTHER WORDS, DO YOU AGREE WITH COUNSEL THAT A
03:59:09 24 DIFFERENT SCOPE WOULD BE INVOLVED IF IT IS TO AT
03:59:12 25 LEAST ONE OF OR AT LEAST TO A PLURALITY?

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03:59:15 1 MR. BLOCK: THAT WOULD BE A DIFFERENT
 03:59:17 2 SCOPE, YOUR HONOR, YES.
 03:59:19 3 NOW, LET ME BE CLEAR, TOO, ABOUT THIS
 03:59:22 4 NOVO CASE. THE NOVO CASE WAS A CASE INVOLVING A
 5 COURT BEING ASKED TO CORRECT AN ERROR IN THE CLAIM.
 6 IN THAT CASE THE CLAIM WITH THE ERROR IN
 03:59:30 7 IT WAS INDECIPHERABLE AND SO IT COULDN'T BE
 03:59:35 8 UNDERSTOOD AND SO IT WAS INDEFINITE.
 03:59:36 9 NOW, THEY WENT TO THE COURT AND SAID,
 03:59:38 10 OKAY, WE HAD THIS MISTAKE, WE HAD THIS ERROR,
 03:59:41 11 COURT, PLEASE FIX THIS FOR US. AND THE FEDERAL
 03:59:45 12 CIRCUIT SAID IN THAT CASE THAT THE COURT CANNOT
 03:59:47 13 CORRECT THAT ERROR AND IT REMAINED INDEFINITE.
 03:59:51 14 WE'RE NOT ASKING THE COURT TO CORRECT THIS CLAIM.
 03:59:53 15 WE'RE SAYING INTERPRET WHAT IT SAYS THE
 03:59:55 16 WAY IT IS BECAUSE IT'S UNDERSTANDABLE AND IT'S NOT
 03:59:59 17 INSOLUBLY AMBIGUOUS AND IT COULD BE UNDERSTOOD BY
 04:00:03 18 PEOPLE OF SKILL IN THE ART TO MEAN TRANSMITTING TO
 04:00:08 19 A PLURALITY OF SUBSCRIBER RECEIVING STATIONS.
 04:00:13 20 THE COURT: WELL, YOU CLEARLY NEED ME TO
 04:00:15 21 STRIKE BECAUSE AT HAS A MEANING. DON'T YOU,
 04:00:17 22 BECAUSE YOU DON'T WANT THIS TO BE TRANSMITTING AT A
 04:00:19 23 PLURALITY OF USE?
 04:00:22 24 MR. BLOCK: I'M NOT ASKING THE COURT TO
 04:00:24 25 STRIKE AT BECAUSE AT HAS A MEANING. IT HAS A

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04:00:29 1 FUNCTION WORD TO SAY TO THE GOAL, DIRECTING
 04:00:33 2 SOMETHING TOWARDS SOMETHING IS AT. IT'S ONE OF THE
 04:00:36 3 MEANINGS OF AT AND SO THE WORD TO, OF COURSE, MEANS
 04:00:48 4 TO AND AT GENERALLY HAS THAT SAME MEANING.
 04:00:48 5 THE COURT: UM --
 04:00:48 6 MR. BLOCK: IT DOESN'T MEAN AT IN THE
 04:00:50 7 PAPERS THAT THE ROUND THREE DEFENDANTS WANT THE
 04:00:53 8 COURT TO INTERPRET THE WORD AT TO MEAN THAT THE
 04:01:04 9 TRANSMITTING OCCURS AT THE RECEIVING STATIONS
 04:01:07 10 MEANING THAT THE TRANSMISSION WOULD OCCUR FROM THE
 04:01:10 11 RECEIVING STATIONS TO THE, TO THE LOCAL
 04:01:13 12 DISTRIBUTION SYSTEM WHICH WOULD, WOULD BE TOTALLY
 04:01:17 13 INCONSISTENT WITH THIS PATENT. THE PATENT ALWAYS
 04:01:20 14 DESCRIBES INFORMATION FLOWING FROM, FROM A LOCAL
 04:01:25 15 DISTRIBUTION SYSTEM TO SUBSCRIBER RECEIVING
 04:01:27 16 STATIONS.
 04:01:28 17 THE COURT: BUT AM I HEARING YOU
 04:01:29 18 CORRECTLY. YOU WOULD WISH ME TO LEAVE AT IN THERE
 04:01:32 19 AS A DELIBERATE TERM THAT THE PATENTEE INTENDED TO
 04:01:35 20 ADD MEANING TO THE CLAIM?
 04:01:38 21 MR. BLOCK: IT'S IN THE PHRASE AND IT, IT
 22 IS THERE AND THAT'S THE WAY THE CLAIM WAS WRITTEN,
 23 THAT'S THE WAY IT WAS SUBMITTED AND, AND --
 04:01:49 24 THE COURT: YOU'RE NOT ANSWERING MY
 04:01:51 25 QUESTION. YOU WANT ME TO INTERPRET THE CLAIM THAT

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04:01:53 1 THIS IS A DELIBERATE TERM THAT ADDS MEANING TO THE
 04:01:56 2 CLAIM?
 04:01:56 3 MR. BLOCK: YES.
 04:01:56 4 THE COURT: AND YOU NEED AT BECAUSE IT
 04:01:59 5 ADDS MEANING?
 04:02:00 6 MR. BLOCK: YES.
 04:02:02 7 THE COURT: YOU'RE A BOLD MAN. VERY
 04:02:12 8 WELL.
 04:02:12 9 MR. DORMAN: YOUR HONOR, TO RESPOND TO
 04:02:14 10 YOUR BOLDNESS COMMENT FOR JUST A MINUTE. MY
 04:02:16 11 UNDERSTANDING ABOUT HOW THIS WORKS IS THAT, IS THAT
 04:02:19 12 WE ARE NOT HERE ASKING FOR YOU TO REWRITE CLAIMS OR
 04:02:24 13 FOR YOU TO CORRECT ERRORS AND SO WE'RE NOT GOING
 04:02:27 14 BEFORE YOU TO TRY TO CORRECT AN ERROR.
 04:02:29 15 THE COURT: YOU KNOW THAT'S DONE. I
 04:02:31 16 DON'T KNOW WHY YOU SHY AWAY FROM THAT. I HAVE HAD
 04:02:34 17 SEVERAL OCCASIONS WHERE I CORRECT TYPOGRAPHICAL
 04:02:36 18 ERRORS AND THERE'S NOTHING WRONG WITH THE COURT
 04:02:38 19 DOING IT AS LONG AS IT CAN RECOGNIZE IT AS A
 04:02:40 20 TYPOGRAPHICAL ERROR AND I HAVE SEEN ANOTHER ONE IN
 04:02:43 21 THE COURSE OF READING THESE PATENTS. AND IT'S
 04:02:46 22 AMAZING THAT THEY GO THROUGH THIS PROCESS AND
 04:02:48 23 THEY'RE THERE, BUT THEY'RE THERE.
 04:02:50 24 SO WHY AREN'T YOU ASKING ME TO DO THAT?
 04:02:53 25 MR. DORMAN: BECAUSE AS I SIT HERE, I

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04:02:56 1 SUSPECT IT WAS AN ERROR BUT I DON'T KNOW IT WAS AN
 04:03:00 2 ERROR. THE APPLICANT MAY HAVE WANTED TO -- IT HAS
 04:03:03 3 TO BE -- I THINK IT'S -- I DON'T KNOW FOR CERTAIN.
 04:03:09 4 BUT ALL I KNOW WHAT IS RELEVANT TO CLAIM
 04:03:12 5 CONSTRUCTION IS THAT THE LANGUAGE EVEN THOUGH IT'S
 04:03:15 6 AWKWARD AT AND TO IN THIS CONTEXT ARE SYNONYMS,
 04:03:20 7 THEY ESSENTIALLY MEAN THE SAME THING AND THEY DON'T
 04:03:23 8 CHANGE THE MEANING AND CONSEQUENTLY THIS CAN BE
 04:03:26 9 CONSTRUED AND IT'S NOT INDEFINITE.
 04:03:28 10 THE COURT: OKAY. YOU'RE BRAVE, TOO.
 04:03:47 11 NEXT TERM.
 04:03:47 12 MR. DORMAN: WE'RE DOWN TO THE NINTH
 04:03:49 13 INNING HERE. WE ONLY HAVE TWO TERMS LEFT.
 04:03:54 14 PUT UP 274.
 04:04:06 15 THE TERM SUBSCRIBER SELECTABLE RECEIVING
 04:04:11 16 STATIONS.
 04:04:12 17 275. THE NEXT ONE.
 04:04:15 18 THE ROUND TWO SATELLITE DEFENDANTS REALLY
 04:04:20 19 HAVE THE BURDEN HERE.
 04:04:21 20 THE PARTIES DISPUTE WHETHER THE COURT
 04:04:23 21 SHOULD ADD A LIMITATION TO THE MEANING OF
 04:04:25 22 SUBSCRIBER SELECTABLE RECEIVING STATIONS. THIS IS
 04:04:29 23 YET ANOTHER INSTANCE WHERE THE DEFENDANTS ARE
 04:04:31 24 PROPOSING THAT YOU GRAFT ON A LIMITATION THAT WE
 04:04:35 25 CONTEND IS NOT IN THE CLAIM.

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